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FILED

AUG 20 2009

RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA

v.

JULIO HERNANDEZ,

Defendant.

No. 3-09-70315-BZ

STIPULATION AND ~~PROPOSED~~
ORDER DOCUMENTING WAIVER

With the agreement of the parties, and with the consent of the defendant, the Court enters this order vacating the preliminary hearing date of August 21, 2009, setting a new preliminary hearing date on September 28, 2009, at 9:30 a.m., before the duty magistrate judge, extending the time for the preliminary hearing under Federal Rule of Criminal Procedure 5.1, and excluding time under the Speedy Trial Act from the date of this stipulation to September 28, 2009. The parties agree and stipulate, and the Court finds and holds, as follows:

1. The defendant, Julio Hernandez, was charged in a complaint dated April 3, 2009 with one count of conspiracy to commit murder in aid of racketeering, one count of conspiracy to

commit assault with a dangerous weapon in aid of racketeering, and one count of using or possessing a firearm in furtherance of a crime of violence, in violation of 18 U.S.C. §§ 1959(a)(5) and (a)(6), 924(c), and 2. Hernandez was transferred into federal custody on April 10, 2009, and presented to Magistrate Judge Maria-Elena James on that day. On April 14, 2009, Hernandez appeared before Magistrate Judge Bernard Zimmerman and Gilbert Eisenberg, Esq., was appointed to represent him. The defendant waived his right to seek bail without prejudice to any future bail applications, and Judge Zimmerman also scheduled a preliminary hearing date for April 17, 2009. The defendant remains detained pending further proceedings.

2. Following the appointment of Mr. Eisenberg, the parties have been conferring regarding possible dispositions of this matter, and as a result, the Court, at the request of both parties, extended the preliminary hearing date several times to accommodate discussions between the parties and to allow the defense to pursue an independent investigation prior to the filing of formal charges. Presently, the defense is in the process of seeking translations of certain audio recordings that may be material to the defense and to the parties' discussions. As such, the parties have not yet been able to finalize their discussions. Accordingly, the parties have asked the Court to extend the preliminary hearing date to September 28, 2009, pursuant to Federal Rule of Criminal Procedure 5.1, and excluding the time under the Speedy Trial Act, 18 U.S.C. § 3161.

3. Taking into the account the public interest in the prompt disposition of criminal cases, the above-stated ground is good cause for extending the time limit for a preliminary hearing under Federal Rule of Criminal Procedure 5.1, for the filing period for an indictment, and for excluding time under the Speedy Trial Act. Failure to grant the continuance would deny the defense time for effective preparation and for seeking disposition of this matter on agreed-upon terms.

4. Accordingly, with the consent of the defendant, the Court hereby: (a) vacates the August 21, 2009 preliminary hearing date and extends the time for a preliminary hearing until September 28, 2009, before the duty magistrate judge, at 9:30 a.m.; and (b) orders that the period from the date of this order to September 28, 2009 be excluded from the time period for preliminary hearings under Federal Rule of Criminal Procedure 5.1 and from Speedy Trial Act

1 calculations under 18 U.S.C. § 3161(h)(7)(A) & (B)(iv).

2 SO STIPULATED:

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4 DATED: August 20, 2009

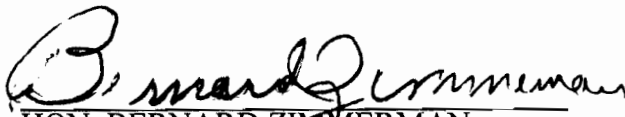
/s/
GILBERT EISENBERG, ESQ.
Attorney for JULIO HERNANDEZ

6
7 DATED: August 20, 2009

/s/
W.S. WILSON LEUNG
Assistant United States Attorney

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10 IT IS SO ORDERED.

11 DATED: August 20, 2009


HON. BERNARD ZIMMERMAN
United States Magistrate Judge